

EXHIBIT L

1 IN THE UNITED STATES DISTRICT COURT
2 DISTRICT OF UTAH, CENTRAL DIVISION
3

4 DIVERSI-PLAST PRODUCTS, INC., a)
5 Minnesota Corporation,)
6 Plaintiff,) Case No.
7 v.) 2:04CV01005 PGC
8 BATTENS PLUS, INC., a California)
9 Corporation,)
10 Defendant.)
11)

12) CONFIDENTIAL
13 BATTENS PLUS, INC., a California)
14 Corporation,) ATTORNEYS' EYES ONLY
15 Counterclaimant,)
16 v.)
17)
18 DIVERSI-PLAST PRODUCTS, INC., a)
19 Minnesota Corporation,)
20 Counter-Defendant.)
21)

22 DEPOSITION OF
23 RICHARD J. MORRIS
24 MINNEAPOLIS, MINNESOTA
25 FRIDAY, NOVEMBER 18, 2005

CERTIFIED COPY

26 ATKINSON-BAKER, INC.
27 COURT REPORTERS
28 (818) 551-7300
29 www.depo.com
30 REPORTED BY: ROLLIE M. TROUP, COURT REPORTER
31 FILE NO.: 9F09A7C

1 A No.

2 Q What was the subject of the correspondence that
3 you reviewed that was to and from Mr. Augustine?

4 A Could you restate that question?

5 Q What was the subject of the correspondence that
6 you reviewed that was to or from Mr. Augustine?

7 A I don't have particular knowledge of a document
8 which was to or from Mr. Augustine.

9 Q I had asked you to name some of the recipients of
10 the correspondence and you named Mr. Augustine;
11 is that correct?

12 A Yes.

13 Q You know -- so, I take it that you know that he
14 was a recipient of one the correspondence, but
15 you don't know the subject of that
16 correspondence; is that correct?

17 A Could you state that in a question?

18 Q Do you know the subject of the correspondence
19 that Mr. Augustine was the recipient of?

20 A Yes.

21 Q What was that subject?

22 A A meeting.

23 Q What was the subject of the meeting?

24 A The discussion for a possible new product for the
25 building material industry.

- 1 Q What was the possible new product?
2 A The possible new product was a product
3 which would be used in the roofing industry to
4 permit ventilation and water flow on a tile roof.
5 Q What was the date of this meeting, approximately?
6 A Approximately the end of January, 1998.
7 Q Who conceived of this new product?

8 MR. MACARI: Objection, asks for a legal
9 conclusion.

10 BY MR. WILCOX:

11 Q You can answer the question.

12 MR. MACARI: Objection, vague.

13 THE WITNESS: Can you clarify the
14 question?

15 BY MR. WILCOX:

16 Q What was discussed at this meeting?

17 A A market need had been identified and we were
18 discussing our possible capabilities and thoughts
19 on how to address this.

20 Q When you say "we were discussing," who is we?

21 A It was a group of Diversi-Plast employees.

22 Q Was there anyone that was not from Diversi-Plast
23 at this meeting?

24 A I do not recall anyone at the meeting that was
25 not from Diversi-Plast.

1 that starts with "I hereby."
2 A I hereby declare that all statements made herein
3 of my own knowledge are true and that all
4 statements made on information and belief are
5 believed to be true; and further that these
6 statements were made with the knowledge that
7 willful false statements and the like so made are
8 punishable by fine or imprisonment, or both,
9 under Section 1001 of Title 18 of the United
10 States Code and that such willful false
11 statements may jeopardize the validity of the
12 application or any patent issued thereon.

13 (Break taken from 3:11 to 3:25.)

14 BY MR. WILCOX:

15 Q Mr. Morris, while we were on break did you review
16 any documents that relate to this deposition?

17 A No.

18 Q While we were at lunch did you review any
19 documents relating to this deposition?

20 A No.

21 Q I'm going to hand you a document that is Bates
22 labeled DP 918. We are going to mark this as
23 Exhibit Number 34.

24 (Exhibit Number 34 marked.)

25 BY MR. WILCOX:

1 Q You can go ahead and review that document.

2 A (Witness complies.)

3 THE WITNESS: I have reviewed the
4 document.

5 BY MR. WILCOX:

6 Q Have you ever seen this document before?

7 A I have -- well, this is one of the documents I
8 reviewed in anticipation of the -- in preparation
9 for the deposition. Prior to that I had a vague
10 recollection of it.

11 Q Who created this document?

12 A I believe it was created by Gary Urbanski.

13 Q Do you know when Gary Urbanski created this
14 document?

15 MR. MACARI: I'm going to object for the
16 record that I don't believe this is the entire
17 document.

18 THE WITNESS: To the best of my memory
19 and recollection I believe it was created in the
20 year 1998.

21 BY MR. WILCOX:

22 Q First of all, you said you reviewed this document
23 in preparation for this deposition. Why did you
24 review this document in preparation for this
25 deposition?

- 1 A I don't recall.
- 2 Q You don't recall whether you made the first sample. Did you make any samples?
- 3 A I don't recall.
- 4 Q You don't recall if you made any samples whatsoever?
- 5 A I don't recall physically making any samples.
- 6 Q Do you recall -- did you ever make a drawing of the product?
- 7 A To the best of my recollection I believe I did.
- 8 Q Did you make the first drawing?
- 9 A To the best of my recollection I believe I did.
- 10 Q Has that drawing been produced?
- 11 A I don't know.
- 12 Q If you saw that drawing could you identify it?
- 13 A Perhaps.
- 14 Q Do you know if that drawing still exists?
- 15 A I don't know.
- 16 Q The third paragraph of this document states, starts with, "A customer in Colorado has experimented," and then continues on.
Who is that customer?
- 17 A We had a representative for our building materials who I believe also may have been a small distributor and he was located in Colorado.

1 Q Who was he, do you know who that person was?
2 A I believe I do.
3 Q Who was that person?
4 A I believe his name was Lars.
5 Q What was his last name?
6 A I believe it's Walberg.
7 Q Can you tell me what Lars Walberg did in relation
8 to this process?

9 MR. MACARI: Objection, vague. Are you
10 talking about the document or his recollection of
11 it?

12 MR. WILCOX: His recollection.

13 THE WITNESS: My recollection of the
14 part that Lars Walberg played in the tile batten
15 was that he had communicated with our marketing
16 manager or through our marketing manager that
17 there was a need in the marketplace for a roof
18 tile batten which would permit drainage and
19 airflow, and it inquired or asked whether it
20 could be produced out of corrugated plastic.

21 BY MR. WILCOX:

22 Q Did he do anything else?
23 A Are you asking about my recollection at the time
24 or now?
25 Q I'm asking about your recollection now.

1 A A soffit is the under part of a roof overhang.
2 Q Can you draw for me, as best you can, the soffit
3 vent that you were producing at this time?

4 MR. MACARI: Objection, vague. What
5 time are we talking about?

6 MR. WILCOX: In January of 1998.

7 MR. MACARI: I'll object and state for
8 the record that for whatever this is worth he's
9 doing a hand sketch and isolated and it's not
10 going to be to scale or any official drawing, but
11 to the extent it is what it is, then he can
12 proceed.

13 THE WITNESS: (Drawing.)

14 MR. MACARI: Can you read back the
15 question for me?

16 (Record read.)

17 MR. MACARI: I'll also state for the
18 record that this sketch is based on his
19 recollection of something that happened, a
20 product that was sold apparently seven years ago.
21 Go ahead.

22 MR. WILCOX: Let's mark this as Exhibit
23 Number 42.

24 (Exhibit Number 42 marked.)

25 BY MR. WILCOX:

1 Q What is the length, approximately, of this item?

2 MR. MACARI: Objection, vague. Are you
3 talking about the actual item or the drawing?

4 BY MR. WILCOX:

5 Q The actual item.

6 A The actual item which was produced and sold as
7 our soffit vent was approximately four feet long.

8 Q Could you note on this drawing that that
9 dimension is actually four feet long?

10 A Yes.

11 Q Please do.

12 A (Witness complies.)

13 MR. MACARI: I'll state for the record
14 any additions he's making from now on, my
15 objection is going to stand that it is based on a
16 recollection from years ago and that it is not to
17 scale and it is a sketch being performed right
18 here during the deposition, being provided during
19 the deposition.

20 BY MR. WILCOX:

21 Q What was the approximate width?

22 A I don't recall.

23 Q Was it greater than two inches?

24 A I don't recall the width.

25 Q Do you know if it was greater than six inches?

1 A It was not greater than six inches.
2 Q Do you know if it was greater than four inches?
3 A I think it was less than four inches.
4 Q Do you know if it was less than three inches?
5 A I believe it is less than three, but I'm not
6 sure.
7 Q You are not sure. So we can say it is less than
8 four inches?

9 A I feel pretty comfortable saying it's less than
10 four.

11 Q Could you mark the width on this drawing and then
12 state that it was less than four inches?

13 MR. MACARI: My previous objection
14 stands.

15 THE WITNESS: (Witness complies.)

16 BY MR. WILCOX:

17 Q What was the height, approximately?

18 A I don't recall.

19 Q Was it greater than five inches?

20 A No.

21 Q It was less than five inches?

22 A Less than five.

23 Q Was it less than four inches?

24 A Less than four.

25 Q Was it less than three inches?

1 A Less than three.

2 Q Was it less than two inches?

3 A Yes, it was less than two.

4 Q Was it less than one inch?

5 A I don't recall.

6 Q Okay. So we can write down that it was less than
7 two inches?

8 MR. MACARI: I'll restate my objections.

9 THE WITNESS: (Witness complies.)

10 BY MR. WILCOX:

11 Q Now, on the front surface of this drawing there
12 appear to be corrugations and they go part way
13 across. By drawing those corrugations do you
14 mean they go all the way across?

15 A Yes.

16 Q What are these corrugations?

17 A Those are the center ply, or the flute, or the
18 corrugations of multiple layers of corrugated
19 plastic board.

20 Q So this top layer is a ply that I'm pointing to
21 right here?

22 MR. MACARI: I'll note for the record
23 that Counsel is providing a red pen mark on the
24 surface.

25 MR. WILCOX: I'm going to --

1 MR. MACARI: That I can't see.

2 BY MR. WILCOX:

3 Q I'm going to find another pen that is not red
4 that will photocopy. Let's start with the
5 bottom. This line right here, the blue line that
6 that black line connects to, and I'm going to
7 label this Number 1. Is that a bottom ply of
8 plastic?

9 A That is a outside ply of a strip of corrugated
10 plastic.

11 MR. MACARI: I'm going to state for the
12 record that now this drawing is a hybrid between
13 the sketch of Mr. Morris and the additional
14 drawing descriptions of Mr. Wilcox.

15 BY MR. WILCOX:

16 Q Is this one that I have labeled Number 2, is that
17 another ply?

18 A That is the center ply, or flute or corrugation.

19 Q And this one that I am labeling Number 3, what is
20 that?

21 MR. MACARI: For the record, my previous
22 objections with regard to the sketch nature of
23 this and the scale and all that, I restate all
24 those objections. You can go ahead.

25 THE WITNESS: The Number 3 line shows a

1 separation between two plies, one is the ply of
2 the corrugated plastic strip, which is lower, and
3 the other would be the surface ply of the
4 corrugated plastic strip which is in contact with
5 the lower strip.

6 BY MR. WILCOX:

7 Q So, this line represents actually two plies; is
8 that correct?

9 A Yes.

10 Q And when I said "this line," I'm referring to the
11 line that is labeled Number 3 in Exhibit Number
12 42?

13 A That is correct.

14 Q Now, referring to Exhibit 3, Exhibit 3 is a piece
15 of a Diversi-Plast batten. How is this product
16 different from the batten a piece of which we
17 have as Exhibit Number 3?

18 A Exhibit Number 42 is a drawing intended to be a
19 representation of our soffit vent at the time of
20 around 1998. It shows staples connecting the
21 various layers of board. The Exhibit Number 3 is
22 a seven-inch sample showing multiple layers of
23 corrugated plastic which is designed with a
24 different specification and physical requirements

NOTARY-REPORTER'S CERTIFICATE

2 STATE OF MINNESOTA)
3 COUNTY OF HENNEPIN) ss.

5 BE IT KNOWN that I, Rollie M. Troup, took
the foregoing deposition of RICHARD MORRIS;
6 That I was then and there a Notary Public in
and for the county of Hennepin and state of Minnesota;
7 That by virtue thereof I was then and there
authorized to administer an oath;

That the witness, before testifying was by me first duly sworn to testify to the truth, the whole truth and nothing but the truth relative to said cause;

10 That the testimony of said witness was
11 recorded in stenotype by me and was reduced to
typewriting by me;

That the foregoing deposition is a true record of the testimony given by said witness:

12 record of the testimony given by said witness,
13 That the right of reading and signing of the
foregoing deposition by the said witness was
exercised;

14 That the cost of the original has been
15 charged to the party who noticed the deposition, and
that all parties who ordered copies have been charged
at the same rate for such copies; and

16 That I am not an employee of any of the
17 parties hereto, nor interested in the outcome of the
 action.

18 WITNESS MY HAND AND SEAL this 30th day
of November, 2005.

Rollie M. Troup
Notary Public
Hennepin County, Minnesota
My Commission Expires
1/31/2010

